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No. 07-1529

IN THE

Supreme Court of the United States

JESSE JAY MONTEJO,
Petitioner,
v.
STATE OF LOUISIANA,
Respondent.

On Writ of Certiorari to the Louisiana Supreme Court

SUPPLEMENTAL BRIEF OF *AMICI CURIAE* THE PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA, THE NATIONAL LEGAL AID & DEFENDER ASSOCIATION, AND THE NATIONAL ASSOCIATION OF FEDERAL DEFENDERS IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE* [1]

The Public Defender Service for the District of Columbia provides and promotes quality legal representation to indigent people facing a loss of liberty in

[1] The parties have consented to the filing of this brief. Counsel of record for all parties received timely notice of *amici's* intention to file this brief. No counsel for any party authored any part of this brief, and no person or entity, other than *amici*, has made a monetary contribution to the preparation or submission of this brief.

the District of Columbia. The National Legal Aid and Defender Association, the nation's oldest and largest nonprofit association of equal justice professionals, includes in its membership the majority of the nation's public defender offices, coordinated assigned counsel systems, and legal services agencies. The National Association of Federal Defenders is a nationwide, nonprofit organization whose membership includes federal public and community defenders authorized under the Criminal Justice Act, 18 U.S.C. § 3006A, and whose mission is to enhance the representation provided under the Act and the Sixth Amendment.

In *Michigan v. Jackson,* 475 U.S. 625, 636 (1986), the Court held that the state violates the Sixth Amendment when it initiates an interview after a defendant requests appointment of counsel after his right to counsel has attached. But as the Court subsequently acknowledged in *Patterson v. Illinois*, 487 U.S. 285, 290 n.3 (1988), the prohibition on state-initiated interviews post-charging also applies "[o]nce an accused has a lawyer." *Amici* presume it is the *Jackson* rule as interpreted by *Patterson* (hereinafter the "*Jackson* rule") that the Court is reconsidering. *Amici* write to explain why this rule is essential to our ability to fulfill our constitutional obligation to provide effective assistance and to ensuring the fundamental fairness of our adversarial system.

SUMMARY OF ARGUMENT

At its inception, the *Jackson* rule was criticized as layering prophylaxis (the *Edwards* rule) on prophylaxis (*Miranda* warnings) in order to protect against a specific danger, coercion, that was thought to be unlikely in the context of a post-charging interview of a represented defendant. *Jackson*, 475 U.S. at 637-

42 (Rehnquist, J., dissenting). But this criticism was as unfair then as it is now. The rule articulated in *Jackson* has independent justification in the Sixth Amendment that is not merely prophylactic and that has nothing to do with coercive interrogation techniques.

The *Jackson* rule precludes the state from initiating an interview with a represented defendant before his attorney has been able to meaningfully communicate with him, investigate his case, obtain discovery, and assess the legal issues presented – all actions that an attorney must take before she can reasonably counsel her client about the advisability of communicating with the state either to persuade the state of his innocence or to negotiate a disposition of the charges. The *Jackson* rule thus ensures that a defense lawyer is able to fulfill her constitutional obligation to provide effective assistance to her client and that her appointment is not a meaningless formalism.

Indeed, given what is involved in making a counseled decision to speak to state agents post-charging, the Court should acknowledge that an invitation by police or prosecutors to a represented defendant to participate in a post-charging interview is a trial-like confrontation that is itself a critical stage in a prosecution warranting Sixth Amendment protection. This conclusion is further supported by the fact that all fifty states and the District of Columbia have ethical rules that, with the aim of promoting fairness in our adversarial system, prohibit prosecutors and their agents from contacting a represented defendant post-charging.

ARGUMENT

I. THE *JACKSON* RULE ENSURES THAT COURT-APPOINTED COUNSEL ARE ABLE TO FULFILL OUR SIXTH AMENDMENT OBLIGATION TO PROVIDE EFFECTIVE ASSISTANCE OF COUNSEL TO OUR CLIENTS.

The *Jackson* rule prevents police and prosecutors from initiating contact with represented defendants at any time post-charging – from the beginning of the prosecution up to and at trial. But given ethical rules that prohibit attorneys and their agents from contacting represented parties and that apply equally in civil and criminal cases, *see* Point III *infra*, the true force of the *Jackson* rule is felt at the earliest stages of a criminal case, just after counsel is appointed or retained. By requiring police and prosecutors to use counsel as the medium to communicate with the defendant, the *Jackson* rule ensures that counsel will have the time needed to adequately advise her client about speaking to state agents post-charging, and thus ensures that her appointment or retention has force and meaning. *See Spano v. New York*, 360 U.S. 315, 326 (1959) ("'[T]he denial of opportunity for appointed counsel . . . to consult with the accused and to prepare his defense, could convert the appointment of counsel into a sham . . . .'") (Douglas, J., concurring) (citation omitted).

Ours is an adversarial system of criminal justice. On one side is the prosecutor, who, within the bounds of doing justice, "may prosecute with earnestness and vigor" and "use every legitimate means to bring about a just" conviction. *Berger v. United States*, 295 U.S. 78, 88 (1935). On the other side is the defendant, who, once charged, is guaranteed the assistance of

counsel to compensate for his lack of "'skill in the science of law'" and "to minimize imbalance in the adversary system" with "a professional prosecuting official." *United States v. Ash*, 413 U.S. 300, 307, 309 (1973) (citation omitted); *see also* U.S. Const. Amend. 6. Defense counsel is charged with zealously advocating for his client within the bounds of the law and is deemed "to best serve[] the public . . . by advancing 'the undivided interests of his client.'" *Polk County v. Dodson,* 454 U.S. 312, 318-19 (1984) (citation omitted); *see also* ABA Standards for Criminal Justice, Defense Function ["ABA Stnd."] 4-1.2 Commentary p. 126 (3d ed. 1993) ("[O]ur adversary process of justice requires that counsel be guided constantly by the obligation to pursue the client's interests."). "The system assumes that adversarial testing will ultimately advance the public interest in truth and fairness." *Polk County,* 454 U.S. at 318. Within this construct, both sides generally prepare their respective cases outside of the view of the other and only disclose information when required by law or when it promotes some strategic advantage.

After the state has filed charges against a defendant, the decision to speak to police or prosecutors is a critical one. At this point the state has determined that the defendant has committed a crime, and police or prosecutors will not be "trying to solve a crime or even absolve a suspect . . . . [R]ather [they will be] concerned primarily with securing a statement from defendant on which they . . . [can] convict" him. *Spano*, 360 U.S. at 324-25. Speaking to police or prosecutors carries great risks, but there are also significant potential benefits. This is why defense counsel, consistent with our role as advocate, routinely advise our clients to participate in interviews

with or make proffers to the state and negotiate the terms of such interactions.

But before an attorney can reasonably assess the advisability of speaking to police or prosecutors post-charging, she must have adequate knowledge of the facts and the law of the case. As part of her constitutional duty to "function as assistant to the defendant," counsel must be able to advise her client intelligently and "advocate the defendant's cause." *Strickland v. Washington*, 466 U.S. 668, 688, (1984). "Prevailing norms of practice as reflected in . . . ABA Standards for Criminal Justice . . . ('The Defense Function'), are guides to determining what" counsel "reasonabl[y]" must do to fulfill this obligation pre-trial. *Id.* at 688; *see also Rompilla v. Beard*, 545 U.S. 374, 387 (2005) (quoting *Strickland*).

To begin with, counsel must quickly establish a relationship with her client such that she can act as an effective advocate. *See* ABA Stnd. 4-3.1. She must meet with her client soon after appointment, and without interference from police, prosecutors or other state agents. *Id.* 4-3.1(b) (noting the "essential" need for "privacy" to facilitate "confidential communications"). At this meeting, counsel may begin to develop possible defenses and investigative leads; to assess the client's ability to participate in his defense; and to learn of any constitutional violations that may have occurred. She must also attempt to advise her client to forestall the loss of important rights, including his right against self-incrimination. *See id.* 4-3.6 Commentary p. 171 ("One of the lawyer's most significant tasks is to inform the client of the nature, extent and importance of constitutional and legal rights and to take the procedural steps necessary to protect them. This includes advice concerning the privilege against self-incrimination and the appropri-

ate responses to be made to a[n] . . . interrogation . . . ."); *see also* ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 69 (2003) (noting the particular importance in death penalty cases for counsel "to try to prevent uncounseled confessions or admissions").

In addition to communicating with her client, counsel must "conduct a prompt investigation of the circumstances of the case and explore all avenues leading to the facts relevant to the merits of the case and penalty in the event of conviction." ABA Stnd. 4-4.1(a); *see also Rompilla,* 545 U.S. 374 (discussing counsel's duty to investigate). The importance of fact investigation cannot be overstated. It "form[s] the basis of effective representation." ABA Stnd. 4-4.1 Commentary p. 181. It is essential for competent representation at trial, but it also "may avert the need for courtroom confrontation," *id.* at 181-82, and is indispensible "to conduct plea negotiations effectively." *Id.* at 183.

Lastly, counsel must determine whether "the prosecution can establish guilt *in law*, not in some moral sense." *Id*. 4-4.1 Commentary p. 182. Accordingly, "[c]ounsel must . . . promptly undertake whatever legal research is necessary to assure vindication of . . . her client's rights." *Id.* 4-3.6 Commentary p. 172; *see also id*. 4-5.1 Commentary p. 197-98 (emphasizing an attorney's duty to be informed given the client's likely ignorance of criminal law and procedure).

Only "after [counsel has] inform[ed] . . . herself fully on the facts and the law" should counsel "advise the accused . . . concerning all aspects of the case, including a candid estimate of the probable outcome." *Id*. 4-5.1(a); *see also id*. 4-6.1(b) (requiring "appropriate investigation and study of the case . . . including

an analysis of controlling law and the evidence likely to be introduced at trial" before counsel recommends a guilty plea).

Part of this conversation should include whether it would be possible or advisable to talk to police or prosecutors either to persuade them of the defendant's innocence or lesser involvement in the crime; or to assist the prosecution of others; or to admit guilt and negotiate a disposition of the case. *Id*. 4-6.1 Commentary p. 205 (an attorney has both the "obligation to explore the possibility of disposition by plea when . . . [she] concludes that conviction of some kind is likely" and a "duty to try to seek dismissal of the charges if . . . [she] concludes that the accused is not guilty or ought not be convicted."). If counsel and her client determine speaking to police or prosecutors is in the client's best interest, it is counsel's obligation to negotiate the terms of any information exchange, *e.g.,* whether the prosecutor would give the client immunity for other revealed crimes, or, in exchange for information, pursue lesser offenses or punishment. *See id*. 4-1.2(b) (counsel's function is "to serve as the accused's counselor and advocate").

Thus, although "an attorney's role at postindictment questioning" may appear "rather . . . unidimensional," limited to advising her client to refrain from making any statements or "advising h[er] client as to what questions [not] to answer," *Patterson*, 487 U.S. at 294 n.6; *see also id*. at 300 (describing counsel's role as "relatively simple and limited"), this appearance is misleading. In fact much must be done by counsel, in consultation with her client, to determine whether and on what terms to submit to an interview with the state post-charging. Counsel must have full knowledge of the facts and law of the case and must have adequately prepared to leverage that

knowledge with the prosecution. In other words, counsel must "bring to bear" the same "skill and knowledge" needed to "render the trial a reliable adversarial testing process." *Strickland*, 466 U.S. at 688; *cf. Hill v. Lockhart*, 474 U.S. 52 (1985) (right to effective assistance applies to counsel's advice to plead guilty).

All of this work takes time, which is precisely what the *Jackson* rule gives defense counsel. Under *Jackson*, the state cannot initiate contact with a represented defendant post-charging. Thus the state agents who seek a defendant's conviction cannot press him to precipitously speak to them and thereby interfere with counsel's efforts to determine the best course of action for her client. Accordingly, the *Jackson* rule safeguards the Sixth Amendment right to effective assistance of counsel itself. *Maine v. Moulton*, 474 U.S. 159, 176 (1985) (The Sixth Amendment "guarantee includes the State's affirmative obligation not to act in a manner that circumvents the protections accorded the accused by invoking this right.").

II. A POST-CHARGING OVERTURE BY POLICE OR PROSECUTORS TO A REPRESENTED DEFENDANT TO PARTICIPATE IN AN INTERVIEW IS ITSELF A CRITICAL STAGE OF OUR ADVERSARIAL PROCESS THAT WARRANTS SIXTH AMENDMENT PROTECTION.

To ensure the functioning of our adversarial system, the Sixth Amendment right to counsel is guaranteed at all "critical stages" of a criminal prosecution, not simply at trial. *Ash*, 413 U.S. at 310-311; *id.* at 312 (the right to counsel extends "to trial-like confrontations" where counsel is needed to "act as a spokesman for, or advisor to, the accused"); *see also*

United States v. Wade, 388 U.S. 218, 227 (1967) ("The presence of counsel at such critical confrontations, as at the trial itself, operates to assure that the accused's interests will be protected consistently with our adversar[ial]" sytem). A critical stage may be "formal or informal, in court or out." *Wade*, 388 U.S. at 226. What is dispositive is whether counsel may be of meaningful assistance – or as explained last term in *Rothgery v. Gillespie County, Tex.*, 128 S. Ct. 2578, 2591 (2008), "what makes a stage critical is what shows the need for counsel's presence." *See also Patterson,* 487 U.S. at 298 ("[W]e have defined the scope of the right to counsel by a pragmatic assessment of the usefulness of counsel . . . .").

The complexity of the decision whether a defendant should speak to police or prosecutors post-charging, *see* Point I *supra*, demonstrates that any overture to a represented defendant is itself a "trial-like confrontation" and a critical stage of a prosecution where counsel's assistance is needed.

Such a conclusion is compelled by this Court's decision in *Estelle v. Smith*, 451 U.S. 454 (1981). In *Estelle*, the prosecution engaged an expert to conduct a psychiatric evaluation of a represented capital defendant without notifying his counsel that it intended to use this evaluation at sentencing to establish future dangerousness. The Court held the state violated the Sixth Amendment because the defendant had a "right to the assistance of counsel *before* submitting to the pretrial psychiatric interview." 451 U.S. at 469 (emphasis added). Specifically, the Court observed the decision to participate in the interview was "'difficult . . . even for an attorney' because it requires 'a knowledge of what other evidence is available, . . . [and] of possible alternative strategies

at the sentencing hearing.'" *Id.* at 471 (citation omitted). Accordingly, the Court held the defendant was entitled to "the assistance of his attorneys in making the significant decision of whether to submit to the examination and to what end the psychiatrist's findings could be employed." *Id*.

"It follows logically from . . . [the Court's] precedents that a [represented] defendant should not be forced to resolve" a similarly if not more "important issue" of whether to submit to a post-charging interview with police or the prosecutors "without 'the guiding hand of counsel.'" *Id.* (quoting *Powell v. Alabama*, 287 U.S. 45, 69 (1932)).

Recognizing that an overture by police or prosecutors to a represented defendant to participate in an interview is a critical stage at which a defendant is entitled to counsel's assistance in no way impinges on a defendant's "free choice" to speak. *Cf. Texas v. Cobb,* 532 U.S. 162, 175 (2001) (Kennedy, J., concurring) (expressing concern about "a Sixth Amendment rule" that would "invalidate a confession given by . . . free choice" in a case where counsel repeatedly gave police permission to interview his client).

As discussed above, counsel may well advise that accepting an invitation for an interview *is* in the client's best interest. But even where counsel advises his client against speaking to police or prosecutors post-charging, her advice is only that – advice. *Ash,* 413 U.S. at 312 (counsel is "an advisor to the accused"). If the defendant wants to speak to police or prosecutors, he can always reject counsel's "guiding hand," *Powell*, 287 U.S. at 69, and initiate contact, just as he can always reject advice regarding other decisions that are ultimately his to make, *e.g.,* the decision to testify at trial or to waive trial and plead

guilty. *See* ABA Stnd. 4-5.2 Commentary p. 201 ("because of the[ir] fundamental nature . . . , so crucial to the accused's fate, the accused must make the[se] decisions himself"). The *Jackson* rule simply ensures a defendant is given the opportunity to receive counsel's advice; in other words, it simply ensures a defendant's free choice is knowing and intelligent.

By contrast, allowing the government to circumvent a defendant's counsel and approach him directly with a request for an interview protects nothing more than his "right" to make an uninformed and perhaps ill-advised decision. This is precisely why a defendant is afforded a right to counsel – in order to ensure that he is not "misled by his lack of familiarity with the law or overpowered by his professional adversary." *Ash,* 413 U.S. at 317. Moreover, it is paradoxical to argue that the only way to preserve a defendant's free choice is to circumvent his counselor-advocate and afford police and prosecutors – parties directly adverse to him – unmonitored access. If *that* is the only way to ensure a defendant's free choice, then the very foundation of the Sixth Amendment right to counsel and our adversarial system is subject to question.

III. THE LONG-STANDING ETHICAL RULE PROHIBITING ATTORNEYS FROM CONTACTING REPRESENTED PARTIES IN *BOTH* CIVIL AND CRIMINAL CASES IS FURTHER EVIDENCE THAT THE *JACKSON* RULE ENSURES FUNDAMENTAL FAIRNESS IN OUR ADVERSARIAL SYSTEM.

At oral argument, there appeared to be a misconception that the ethical rule prohibiting attorneys

from contacting represented persons applies only in civil cases. *See* Oral Argument Transcript, *Montejo v. Louisiana*, 2009 WL 76296 at *10, 32 (Jan. 13, 2009). In fact, ABA Model Rule of Professional Conduct ["ABA Rule"] 4.2 (Feb. 2009) and its state counterparts apply equally in the civil and criminal context and reflect a long-standing consensus about the unfairness of circumventing a represented person's counsel, particularly in a criminal case post-charging. Indeed, this universally accepted ethical rule is further evidence that the *Jackson* rule operates to ensure fundamental fairness in our adversarial justice system and is thus compelled by the Sixth Amendment.

Admonitions in England and the United States against contact with represented parties date back at least to the early nineteenth century. For example, in *In re Oliver*, 111 Eng. Rep. 239, 240 (K.B. 1835), the court, in evaluating the legitimacy of a document signed by a woman in the absence of counsel, disregarded conflicting arguments made about her competence, sophistication in matters of business, and whether or not she had indicated need for her solicitor's assistance. Instead, the chief judge held that "[t]his rule must be made absolute. When it appeared that Mrs. Oliver had an attorney . . . it was improper to obtain her signature, with no attorney present on her part. If this were permitted, a very impure, and often fraudulent, practice would prevail." *Id.* A year later, David Hoffman, "one of the foremost legal educators of the early American Bar," James M. Altman, *Considering the A.B.A.'s 1908 Canons of Ethics*, 2008 Prof. Law. 235, 261, proclaimed, "I will never enter into any conversation with my opponent's client, relative to his claim or defence, except with the consent, and in the presence of his

counsel." ABA Formal Op. 95-396 (1995) *2 (citation omitted). The ABA relied heavily on Professor Hoffman's treatise when it drafted its first set of ethical rules for lawyers, ABA Canons of Professional Ethics (1908), which included a no-contact rule, *id.* Cannon 9, the progenitor of modern ABA Rule 4.2. Altman, *supra*, at 239-240; ABA Formal Op. 124 (1934).

ABA Rule 4.2 prohibits a lawyer and his agents from "communicat[ing] about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." ABA Rule 4.2; *id.* Comment 4. The rule's comments specifically provide that "[w]hen communicating with the accused in a criminal matter, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused." *Id.* Comment 5; *see also* ABA Formal Op. 95-396 at *3 ("[I]t is clear that Rule 4.2 applies to the conduct of lawyers in criminal as well as civil matters. . . ."). Indeed, the ABA has acknowledged that "there are perhaps stronger policy considerations" for the application of the no-contact rule in criminal cases. ABA Formal Op. 1373 (1976). The ABA has accordingly incorporated into its ethical rules for prosecutors a no-contact provision specifically prohibiting them from interacting with defendants at initial appearances absent a waiver of counsel. *See* ABA Criminal Justice Standards, Prosecution Function, 3-3.10 (a); *see also id.* Commentary p.79-80 (noting the "consisten[cy]" of this rule "with the spirit of both ABA model [Rule 4.2 and its predecessor].").

All fifty states and the District of Columbia include in their rules of professional responsibility some form of "no contact" rule, which at the very least prohibits prosecutors and their agents from contacting represented criminal defendants post-charging, and the overwhelming majority have simply adopted the text of ABA Rule 4.2. *See* Appendix of State Rules of Professional Responsibility. Almost all federal district courts have rules directing attorneys to abide by local ethical rules or the ABA rules. *See* Appendix of Federal District Court Rules Regarding Rules of Professional Responsibility.[2]

The purpose of this "no-contact" rule has nothing to do with concerns about coerced statements, and everything to do with ensuring fairness in our adversarial system of civil and criminal justice and, as a means to that end, preserving the attorney-client relationship. Its "fundamental premise" is that "[t]he legal system in its broadest sense functions best when persons in need of legal advice or assistance are represented by their own counsel." ABA Model Code of Professional Responsibility EC 7-18 (1983)[3]; *see also* ABA Formal Op. 95-396 at *3 (the purpose of Rule 4.2 is to "protect represented persons against

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[2] In the 1980s, the Department of Justice ["DOJ"] challenged its obligation to abide by state no-contact rules pre-charging, while accepting no-contact rules post-charging. *See* Ethical Restraints of the ABA Code of Professional Responsibility on Federal Criminal Investigations, Office of Legal Counsel, 1980 WL 20955 *10 (Apr. 18, 1980) (distinguishing the two scenarios). DOJ ultimately lost the pre-charging no-contact battle with the passage of the McDade-Murtha Citizens Protection Act, 28 U.S.C. § 530A.

[3] Ethical Consideration 7-18 preceded ABA Rule 4.2 and "set[] out the central proposition on which all of the anti-contact rules have rested." ABA Formal Op. 95-396 *3.

overreaching by adverse counsel, safeguard the attorney-client relationship from interference, and reduce the likelihood that clients will disclose . . . information harmful to their interests").

Indigent defendants are not denied the benefit of this ethical rule simply because counsel was appointed for them by the Court. Rather, to conform with "the letter and the spirit of the canons of ethics," "once a criminal defendant has either retained an attorney or had an attorney appointed for him by the court," a prosecutor must notify the defendant's attorney of any interview and "give[] [the attorney] a reasonable opportunity to be present." *United States v. Thomas*, 474 F.2d 110, 112 (10th Cir. 1973).

Prosecutors and their agents have long been bound by ethical rules prohibiting contact with represented parties with no adverse effect. *Amici* do not argue that the Sixth Amendment right to counsel is coextensive with these no-contact rules, which "serve separate, albeit congruent purposes."[4] *United States v. Hammad*, 858 F.2d 834, 839 (2d Cir. 1988). But, consistent with these rules, the Sixth Amendment must at least guarantee represented defendants the core protection against state-initiated interviews post-charging, which has long been considered essential to the functioning and fairness of our adversarial system.

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[4] These rules vary in scope, *see* Appendix, and apply in civil proceedings. Moreover, some state rules preclude a lawyer from communicating with a represented defendant pre-charging or even when the defendant initiates contact. The Sixth Amendment does not extend so far. *See Rothgery*, 128 S. Ct. at 2592; *cf. Brewer v. Williams*, 430 U.S. 387, 405-06 (1977); *see also* p. 11-12 *supra*.

CONCLUSION

Even as police were pressing Mr. Montejo for more information to use to convict him, his court-appointed counsel was trying to meet him for the first time so they could begin work on his case. *See* Petitioner's Brief at 9-10. Without the *Jackson* rule, it will become commonplace for police to race to interview a represented defendant before he can obtain meaningful advice from counsel about whether and on what terms he should speak to state agents. Whether there is, as here, a gap between appointment and a defendant's first meeting with counsel because public defenders' offices cannot afford to send attorneys to staff initial appearances, or whether a defendant has had a "hurried interchange," *Minnick v. Mississippi*, 498 U.S. 146, 153 (1990), with counsel in a crowded courthouse lockup, a defendant's Sixth Amendment right to a counselor and advocate post-charging and pre-trial will be significantly diminished. Accordingly, *amici* respectfully urge the Court to reaffirm *Michigan v. Jackson*.

Respectfully submitted,

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APPENDIX A

STATE RULES OF PROFESSIONAL RESPONSIBILITY

Alabama

ALA. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.").

Alaska

ALASKA R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a party or person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.").

Arizona

17A ARIZ. REV. STAT. SUP. CT. R. 42, R. OF PROF. CONDUCT E.R. 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.").

Arkansas

ARK. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law.").

California

CAL. R. OF PROF. CONDUCT 2-100(A) ("While representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer.").

Colorado

COLO. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

Connecticut

CONN. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.").

Delaware

DEL. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

District of Columbia

D.C. R. OF PROF. CONDUCT 4.2(a) ("During the course of representing a client, a lawyer shall not

communicate or cause another to communicate about the subject of the representation with a person known to be represented by another lawyer in the matter, unless the lawyer has the prior consent of the lawyer representing such other person or is authorized by law or a court order to do so.").

Florida

FLA. STAT. ANN. BAR R. 4-4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer. Notwithstanding the foregoing, an attorney may, without such prior consent, communicate with another's client in order to meet the requirements of any court rule, statute or contract requiring notice or service of process directly on an adverse party, in which event the communication shall be strictly restricted to that required by the court rule, statute or contract, and a copy shall be provided to the adverse party's attorney.").

Georgia

GA. STATE BAR R. AND REG., R. 4-102, R. OF PROF. CONDUCT 4.2 ("(a) A lawyer who is representing a client in a matter shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by constitutional law or statute. (b) Attorneys for the State and Federal Government shall be subject to this rule in the same manner as other attorneys in this State. The maximum penalty for a violation of this rule is disbarment.").

Hawaii

HAW. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.").

Idaho

IDAHO R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

Illinois

ILL. Sup. Ct. R. OF PROF. CONDUCT 4.2 ("During the course of representing a client a lawyer shall not communicate or cause another to communicate on the subject of the representation with a party the lawyer knows to be represented by another lawyer in that matter unless the first lawyer has obtained the prior consent of the lawyer representing such other party or as may otherwise be authorized by law.").

Indiana

IND. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law or a court order.").

Iowa

IOWA R. OF PROF. CONDUCT 32.D.R. 7-104(a) ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.")

Kansas

KAN. SUP. CT. R. 226, R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

Kentucky

KY. SUP. CT. R. 3.130(4.2) ("In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.").

Louisiana

LA. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject representation with: (a) a person the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized so by law or a court order.

Maine

ME. CODE PROF. RESPONSIBILITY, R. 3.6(f) ("During the course of representation of a client, a lawyer shall

not communicate or cause another to communicate on the subject of the representation with a party the lawyer knows to be represented by another lawyer in that matter unless the lawyer has the prior consent of the lawyer representing such other party or is authorized by law to do so.").

Maryland

MD. R., R. 16-812, MD. LAWYERS' R. OF PROF. CONDUCT 4.2 ("[I]n representing a client, a lawyer shall not communicate about the subject of the representation with a person who the lawyer knows is represented in the matter by another lawyer unless the lawyer has the consent of the other lawyer or is authorized by law or court order to do so.").

Massachusetts

MASS. R. SUP. JUD. CT. R. 3:07, R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.").

Michigan

MICH. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a party whom the lawyer knows to be represented in the matter by another lawyer, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.").

Minnesota

MINN. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer

knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

Mississippi

MISS. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.").

Missouri

MO. SUP. CT. R. 4-4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

Montana

MONT. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

Nebraska

NEB. CT. R. OF PROF. CONDUCT § 3-504.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent

of the other lawyer or is authorized to do so by law or a court order.").

Nevada

NEV. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

New Hampshire

N.H. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

New Jersey

N.J. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows, or by the exercise of reasonable diligence should know, to be represented by another lawyer in the matter . . . unless the lawyer has the consent of the other lawyer, or is authorized by law or court order to do so, or unless the sole purpose of the communication is to ascertain whether the person is in fact represented. Reasonable diligence shall include, but not be limited to, a specific inquiry of the person as to whether that person is represented by counsel.").

New Mexico

N.M. R. OF PROF. CONDUCT 16-402 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

North Carolina

N.C. R. OF PROF. CONDUCT 4.2(a) ("During the representation of a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. It is not a violation of this rule for a lawyer to encourage his or her client to discuss the subject of the representation with the opposing party in a good-faith attempt to resolve the controversy.").

North Dakota

N.D. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

Ohio

OHIO R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer *knows* to be represented by another lawyer in the

matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

Oklahoma

OKLA. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

Oregon

OR. R. OF PROF. CONDUCT 4.2 ("In representing a client or the lawyer's own interests, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a person the lawyer knows to be represented by a lawyer on that subject unless: (a) the lawyer has the prior consent of a lawyer representing such other person; (b) the lawyer is authorized by law or by court order to do so; or (c) a written agreement requires a written notice or demand to be sent to such other person, in which case a copy of such notice or demand shall also be sent to such other person's lawyer.").

Pennsylvania

PA. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

Rhode Island

R.I. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.").

South Carolina

S.C. APP. CT. R. 407, R. 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

South Dakota

S.D. CODIFIED LAWS 16-18 APP., R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

Tennessee

TENN. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.").

Texas

TEX. DISC. R. OF PROF. CONDUCT, R. 4.02(a) ("In representing a client, a lawyer shall not communicate

or cause or encourage another to communicate about the subject of the representation with a person, organization or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.").

Utah

UTAH R. OF PROF. CONDUCT 4.2(a) ("General rule. In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer. Notwithstanding the foregoing, an attorney may, without such prior consent, communicate with another's client if authorized to do so by any law, rule, or court order, in which event the communication shall be strictly restricted to that allowed by the law, rule or court order, or as authorized by paragraphs (b), (c), (d) or (e) of this rule.").

Id. at 4.2(c) ("Rule Relating to Government Lawyers Engaged in Civil or Criminal Law Enforcement. A government lawyer engaged in a criminal or civil law enforcement matter, or a person acting under the lawyer's direction in the matter, may communicate with a person known to be represented by a lawyer if: (c)(1) the communication is in the course of, and limited to, an investigation of a different matter unrelated to the representation or any ongoing, unlawful conduct; or (c)(2) the communication is made to protect against an imminent risk of death or serious bodily harm or substantial property damage that the government lawyer reasonably believes may occur and the communication is limited to those matters necessary to protect against the imminent risk; or

(c)(3) the communication is made at the time of the arrest of the represented person and after that person is advised of the right to remain silent and the right to counsel and voluntarily and knowingly waives these rights; or (c)(4) the communication is initiated by the represented person, directly or through an intermediary, if prior to the communication the represented person has given a written or recorded voluntary and informed waiver of counsel, including the right to have substitute counsel, for that communication.").

Id. at 4.2(e) ("Limitations on Communications. When communicating with a represented person pursuant to this rule, no lawyer may (e)(1) inquire about privileged communications between the person and counsel or about information regarding litigation strategy or legal arguments of counsel or seek to induce the person to forgo representation or disregard the advice of the person's counsel; or (e)(2) engage in negotiations of a plea agreement, settlement, statutory or non-statutory immunity agreement or other disposition of actual or potential criminal charges or civil enforcement claims or sentences or penalties with respect to the matter in which the person is represented by counsel unless such negotiations are permitted by law, rule or court order.").

Vermont

VT. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.").

Virginia

VA. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.").

Washington

WASH. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

West Virginia

W. VA. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.").

Wisconsin

WIS. SUP. CT. R. CH. 20, S.C.R. 20:4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

Wyoming

WYO. R. OF PROF. CONDUCT 4.2 ("In representing a client, a lawyer shall not communicate about the sub-

ject of the representation with a person or entity the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

APPENDIX B

FEDERAL DISTRICT COURT RULES REGARDING RULES OF PROFESSIONAL RESPONSIBILITY

District Courts Adopting State Ethical Rules and/or ABA Model Rules

Alabama

U.S. DIST. CT. R. N.D. ALA., L. R. 83.1(f) ("Each attorney who is admitted to the bar of this court or who appears in this court pursuant to subsection (b) or (c) of this Rule is required to be familiar with, and shall be governed by, the Local Rules of this court and, to the extent not inconsistent with the preceding, the Alabama Rules of Professional Conduct adopted by the Alabama Supreme Court and, to the extent not inconsistent with the preceding, the American Bar Association Model Rules of Professional Conduct, except Rule 3.8(f) thereof.").

U.S. DIST. CT. R. M.D. ALA., L. R. 83.1(f) ("Attorneys admitted to practice before this Court shall adhere to this Court's Local Rules, the Alabama Rules of Professional Conduct, the Alabama Standards for Imposing Lawyer Discipline, and, to the extent not inconsistent with the preceding, the American Bar Association Model Rules of Professional Conduct.").

U.S. DIST. CT. R. S.D. ALA., L. R. 83.5(f) ("Any attorney who is admitted to the Bar of this Court or who appears in this Court pursuant to subsection (b), (c), (d) or (e) of this rule shall agree to read and abide by the Local Rules of this Court, the ethical limitations and requirements governing the behavior of members of the Alabama State Bar, and, to the extent not inconsistent with the preceding, the Ameri-

can Bar Association Model Rules of Professional Conduct.").

Alaska

D. ALASKA L. R. 83.1(i)(1) ("Every member of the bar of this court and any attorney admitted to practice or appear in this court must . . . be familiar with and comply with the Standards of Professional Conduct required of the members of the State Bar of Alaska and contained in the Alaska Rules of Professional Conduct and decisions of any court applicable thereto, except insofar as those rules and decisions are otherwise inconsistent with federal law . . . .").

Arizona

U.S. DIST. CT. R. D. ARIZ., L. R. 83.2(e) ("The 'Rules of Professional Conduct,' in the Rules of the Supreme Court of the State of Arizona, shall apply to attorneys admitted or otherwise authorized to practice before the United States District Court for the District of Arizona.").

Arkansas

UNIF. U.S. DIST. CT. R. D. ARK., DISCIPLINARY ENFORCEMENT R. 4B ("The Code of Professional Responsibility or Rules of Professional Conduct adopted by this Court is the Code of Professional Responsibility or Rules of Professional Conduct adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state.").

California

U.S. DIST. CT. R. E.D. CAL., GEN. L. R. 83-180(e) ("Every member of the Bar of this Court, and any at-

torney permitted to practice in this Court under subsection (b), shall become familiar with and comply with the standards of professional conduct required of members of the State Bar of California and contained in the State Bar Act, the Rules of Professional Conduct of the State Bar of California and decisions of any Court applicable thereto, which are hereby adopted as standards of professional conduct in this Court.").

U.S. DIST. CT. R. N.D. CAL., CIV. L. R.11-4(a) ("Every member of the bar of this Court and any attorney permitted to practice in this Court under Civil L. R. 11 must . . . [b]e familiar and comply with the standards of professional conduct required of members of the State Bar of California . . . .").

U.S. DIST. CT. R. C.D. CAL., CIV. L. R. 83-3.1.2 ("[E]ach attorney shall be familiar with and comply with the standards of professional conduct required of members of the State Bar of California and contained in the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and the decisions of any court applicable thereto.").

U.S. DIST. CT. R. S.D. CAL., CIV.L. R. 83.4(b) ("Every member of the bar of this court and any attorney permitted to practice in this court shall be familiar with and comply with the standards of professional conduct required of members of the State Bar of California, and decisions of any court applicable thereto, which are hereby adopted as standards of professional conduct of this court.").

Colorado

U.S. DIST. CT. R. D. COLO., D. COLO.LCRR 57.6 ("Except as otherwise provided by Administrative Order, the Colorado Rules of Professional Conduct

adopted by the Colorado Supreme Court . . . are adopted as standards of professional responsibility applicable in this court."); *see also* U.S. DIST. CT. R. D. COLO., App. O ("D. COLO. LCIVR 83.4 and D. COLO. LCRR 57.6 set forth the standards of professional responsibility applicable in this court. Those standards incorporate the Colorado Rules of Professional Conduct, as adopted by the Colorado Supreme Court, en banc . . . .").

Connecticut

U.S. DIST. CT. R. D. CONN., L.CIV.R. 83.2(a)(1) ("Other than the specific Rules enumerated in Rule 83.2(a)(2) of these Local Rules, this Court recognizes the authority of the 'Rules of Professional Conduct,' as approved by the Judges of the Connecticut Superior Court as expressing the standards of professional conduct expected of lawyers practicing in the District of Connecticut."); U.S. DIST. CT. R. D. CONN., L.CR.R. 1(c) ("The following Local Civil Rules shall apply in criminal proceedings . . . 83.2 (Discipline of Attorneys) . . . .").

Delaware

D. DEL. L. R. 83.6(d) ("Subject to such modifications as may be required or permitted by federal statute, court rule, or decision, all attorneys admitted or authorized to practice before this Court, including attorneys admitted on motion or otherwise, shall be governed by the Model Rules of Professional Conduct of the American Bar Association ('Model Rules'), as amended from time to time.").

District of Columbia

U.S. DIST. CT. R. D.C., LCVR 83.15(a) ("Violations of the Rules of Professional Conduct (as adopted by the

District of Columbia Court of Appeals except as otherwise provided by specific Rule of this Court) by attorneys subject to these Rules shall be grounds for discipline . . . .”); U.S. DIST. CT. R. D.C., LCRR 57.26(a) (same).

Florida

U.S. DIST. CT. R. N.D. FLA., L. R.11.1(E)(1) (“Except where an act of Congress, federal rule of procedure, Judicial Conference Resolution, or rule of court provides otherwise, the professional conduct of all members of the bar of this district, with respect to any matter before this court, shall be governed by the Rules of Professional Conduct of the Rules Regulating The Florida Bar.”).

U.S. DIST. CT. R. M.D. FLA., L. R. 2.04(d) (“The professional conduct of all members of the bar of this Court . . . shall be governed by the Model Rules of Professional Conduct of the American Bar Association as modified and adopted by the Supreme Court of Florida to govern the professional behavior of the members of The Florida Bar.”).

U.S. DIST. CT. R. S.D. FLA., GEN. R.11.1(C) (“The standards of professional conduct of members of the Bar of this Court shall include the current Rules Regulating The Florida Bar. For a violation of any of these canons in connection with any matter pending before this Court, an attorney may be subjected to appropriate disciplinary action.”).

Georgia

U.S. DIST. CT. R. N.D. GA., CIV. L. R. 83.1(C) (“All lawyers practicing before this court shall be governed by and shall comply with the specific rules of practice adopted by this court and, unless otherwise provided,

with the Georgia Rules of Professional Conduct contained in the Rules and Regulations of the State Bar of Georgia and with the decisions of this court interpreting these rules and standards."); U.S. DIST. CT. R. N.D. GA., CRIM. L. R. LCrR 57.1(C) ("Refer to L. R. 83.1C.").

U.S. DIST. CT. R. M.D. GA., CIV. RULE 83.2.1 ("Attorneys practicing before this Court shall be governed by this Court's Local Rules, by the Rules of Professional Conduct adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, and, to the extent not inconsistent with the preceding, the American Bar Association Model Rules of Professional Conduct, except as otherwise provided by specific Rule of this Court.").

U.S. DIST. CT. R. S.D. GA., L. R. 83.5(d) ("The standards of professional conduct of attorneys appearing in a case or proceeding, or representing a party in interest in such a case or proceeding, are governed by the Georgia Bar Rules of Professional Conduct and the American Bar Association's Model Rules of Professional Conduct.").

Hawaii

D. HAW. GEN. R. & CIV. R., L. R. 83.3 ("Every member of the bar of this court and any attorney permitted to practice in this court pursuant to L. R. 83.1(d) shall be governed by and shall observe the standards of professional and ethical conduct required of members of the Hawai'i State Bar.").

Idaho

D. IDAHO L. R. 83.5(a) ("All members of the bar of the District Court . . . for the District of Idaho . . . and

all attorneys permitted to practice in this Court must familiarize themselves with and comply with the Idaho Rules of Professional Conduct of the Idaho State Bar and decisions of any court interpreting such rules. These provisions are adopted as the standards of professional conduct for this Court but must not be interpreted to be exhaustive of the standards of professional conduct.").

Illinois

N.D. ILL. R. PROF. CONDUCT, L. R. 83.54.2 (Following ABA Rule 4.2: "During the course of representing a client a lawyer shall not communicate or cause another to communicate on the subject of the representation with a party the lawyer knows to be represented by another lawyer in that matter unless the first lawyer has obtained the prior consent of the lawyer representing such other party or as may otherwise be authorized by law.").

C.D. ILL. L. R., GEN. & CIV. R., L. R. 83.6(D) ("The Rules of Professional Conduct adopted by this court are the Rules of Professional Conduct adopted by the Supreme Court of Illinois, as amended from time to time by that court, except as otherwise provided by specific rule of this court after consideration of comments by representatives of bar associations within the state.").

S.D. ILL. L. R. 83.4(d)(2) ("The Rules of Professional Conduct adopted by this court are the Rules of Professional Conduct adopted by the Supreme Court of Illinois as amended from time to time, except as otherwise provided by specific rule of this court.").

Indiana

N.D. IND. L. R. 83.5(f) ("The Rules of Professional Conduct, as adopted by the Indiana Supreme Court,

and the Standards for Professional Conduct, as adopted by the Seventh Circuit, shall provide standards of conduct for those practicing in this court.").

S.D. IND. L. R. 83.5(g) ("The Rules of Professional Conduct, as adopted by the Indiana Supreme Court, shall provide the rules governing conduct for those practicing in this Court.").

Iowa

N.D. IOWA & S.D. IOWA L.CIV.R. 83.1(g)(1) ("The Iowa Rules of Professional Conduct, or any successor code adopted by the Iowa Supreme Court, govern all members of the bar of this court and, to the extent provided in subsection d.3 of this rule, those admitted pro hac vice.").

Kansas

D. KAN. L. R. 83.6.1(a) ("The Kansas Rules of Professional Conduct as adopted by the Supreme Court of Kansas, and as amended by that court from time to time, except as otherwise provided by a specific rule of this court, are adopted by this court as the applicable standards of professional conduct.").

Kentucky

E.D. KY. & W.D. KY. JT. L. R. CIV. PRACT. 83.3(c) ("If it appears to the Court that an attorney practicing before the Court has violated the rules of the Kentucky Supreme Court governing professional conduct or is guilty of other conduct unbecoming an officer of the Court, any judge may order an attorney to show cause--within a specified time--why the Court should not discipline the attorney."); JT. U.S. DIST. CT. R. D. KY., L.CR.R. 57.3(c) (same).

Louisiana

E.D. LA., M.D. LA., & W.D. LA. UNIF. L. R., 83.2.4E ("This court hereby adopts the Rules of Professional Conduct of the Louisiana State Bar Association, as hereafter may be amended from time to time by the Louisiana Supreme Court, except as otherwise provided by a specific rule or general order of a court."); E.D. LA., M.D. LA., & W.D. LA. UNIF. L. R., 83.2.4M (same); E.D. LA., M.D. LA., & W.D. LA. UNIF. L. R., 83.2.4W (same).

Maine

D. ME. CIV. R. 83.3(d) ("This Court adopts as its standard for professional conduct the Code of Professional Responsibility adopted by the Supreme Judicial Court of Maine, as amended from time to time by that Court.").

Maryland

D. MD. R.704 ("This Court shall apply the Rules of Professional Conduct as they have been adopted by the Maryland Court of Appeals.").

Massachusetts

D. MASS. L. R. 83.6(4)(B) ("The ethical requirements and rules concerning the practice of law mean those canons and rules adopted by the Supreme Judicial Court of Massachusetts . . . as they may be amended from time to time by said court, except as otherwise provided by specific rule of this court after consideration of comments by representatives of bar associations within the Commonwealth.").

Michigan

E.D. MICH. L. R. 83.20(j) ("An attorney admitted to the bar of this court or who practices in this court as

permitted by this rule is subject to the Rules of Professional Conduct adopted by the Michigan Supreme Court . . . .").

Minnesota

D. MINN. L. R. 83.6(d)(2) ("The *Minnesota Rules of Professional Conduct* adopted by the Supreme Court of Minnesota as amended from time to time by that Court are adopted by this Court except as otherwise provided by specific rules of this Court.").

Mississippi

UNIF. L. R. N.D. MISS. & S.D. MISS., R.83.5 ("An attorney who makes an appearance in any case in the district court is bound by the provisions of the Mississippi Rules of Professional Conduct and is subject to discipline for violation thereof.").

Missouri

E.D. MO. L. R. 83-12.02 ("The Rules of Professional Conduct adopted by this Court are the Rules of Professional Conduct adopted by the Supreme Court of Missouri, as amended from time to time by that Court, except as may otherwise be provided by this Court's Rules of Disciplinary Enforcement.").

W.D. MO. L.CIV.R. 83.5(c)(2) ("The Code of Professional Responsibility adopted by this Court is the Code of Professional Responsibility adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state.").

Montana

D. MONT. GEN. R. 83.13 ("The standards of professional conduct of attorneys practicing in this Court

include the American Bar Association's Model Rules of Professional Conduct and the Montana Rules of Professional Conduct.").

Nevada

D. NEV. L. R. IA 10-7(a) ("An attorney admitted to practice pursuant to any of these rules shall adhere to the standards of conduct prescribed by the Model Rules of Professional Conduct as adopted and amended from time to time by the Supreme Court of Nevada, except as such may be modified by this Court.").

New Hampshire

N.H. L.CIV.R. 83.5 DR-1 ("The Standards for Professional Conduct adopted by this court are the Rules of Professional Conduct as adopted by the New Hampshire Supreme Court, as the same may from time to time be amended by that court, and any standards of conduct set forth in these rules."); N.H. L.CRIM.R. 1.1(d) ("The following civil/general local rules shall apply in criminal actions: Rule[] . . . 83.5 . . . .").

New Jersey

D. N.J. L.CIV.R. 103.1(a) ("The Rules of Professional Conduct of the American Bar Association as revised by the New Jersey Supreme Court shall govern the conduct of the members of the bar admitted to practice in this Court, subject to such modifications as may be required or permitted by Federal statute, regulation, court rule or decision of law."); D. N.J. L.CRIM.R. 1.1 ("The following Local Civil Rules are applicable to criminal cases tried in the District of New Jersey . . . L.Civ.R. 103.1 . . . .").

New Mexico

D. N.M. L.CIV.R. 83.9 ("The Rules of Professional Conduct adopted by the Supreme Court of the State of New Mexico apply except as otherwise provided by local rule or by Court order."); D. N.M. L.CRIM.R. 57.2 ("In all criminal proceedings, attorneys will comply with the Rules of Professional Conduct adopted by the Supreme Court of the State of New Mexico, unless modified by local rule or Court order.").

New York

S.D.N.Y. & E.D.N.Y. L.CIV.R. 1.5(b)(5) ("Discipline or other relief . . . may be imposed . . . if . . . [i]n connection with activities in this court, any attorney found to have engaged in conduct violative of the New York State Lawyer's Code of Professional Responsibility as adopted from time to time by the Appellate Divisions of the State of New York, and as interpreted and applied by the United States Supreme Court, the United States Court of Appeals for the Second Circuit, and this court."); S.D.N.Y. & E.D.N.Y. L.CRIM. R.1.1(b) ("In addition to these Local Criminal Rules, Local Civil Rules 1.2 through 1.10 . . . apply in criminal proceedings.").

N.D.N.Y. L. R. 83.4(j) ("The Court shall enforce the N.Y.S. Lawyer's Code of Professional Responsibilities, as adopted from time to time by the Appellate Division of the State of New York and as interpreted and applied by the United States Court of Appeals for the Second Circuit.").

W.D.N.Y. L.CIV.P.R. 83.1(b)(6) (Each applicant for admission is required to submit "a verified petition for admission stating . . . that the applicant agrees to adhere faithfully to the New York State Lawyer's Code of Professional Responsibility as adopted from

time to time by the Appellate Divisions of the State of New York."); W.D.N.Y. L.CRIM.P.R. 57.2 ("All rules related to attorney admission to practice, attorneys of record, discipline of attorneys, student practice and student law clerks are found in Local Rules of Civil Procedure 83.1, 83.2, 83.3, 83.6 and 83.7, all of which are incorporated by reference into these Local Rules of Criminal Procedure.").

North Carolina

U.S. DIST. CT. R. E.D.N.C., CIV. R. 83.1(j) ("The ethical standard governing the practice of law in this court are the Revised Rules of Professional Conduct, now in force and as hereafter modified by the Supreme Court of North Carolina, except as may be otherwise provided by specific rule of this court."); U.S. DIST. CT. R. E.D. N.C., CRIM. R. 57.1(j) (same).

M.D.N.C. L. R. CIV.P. L. R. 83.10e(b) ("The Code of Professional Responsibility adopted by this court is the Code of Professional Responsibility adopted by the Supreme Court of North Carolina, as amended from time to time by that state court, except as otherwise provided by a specific rule of this court.").

W.D.N.C. L. R.83.1(c) (by making an appearance, counsel representing governmental or tribal agencies "agrees to abide by the Local Rules, the North Carolina Rules of Professional Conduct, and to submit themselves to this Court for the enforcement of such rules.").

Ohio

N.D. OHIO L.CIV.R. 83.7(a) ("Attorneys admitted to practice in this Court shall be bound by the ethical standards of the *Ohio Rules of Professional Conduct* adopted by the Supreme Court of the State of Ohio,

so far as they are not inconsistent with federal law . . . .").

S.D. OHIO L. R., ORDER 81-1, MODEL F.R. OF DISC. ENF. IVB ("The Rules of Professional Conduct adopted by this court are the Rules of Professional Conduct adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives or bar associations within the state.").

Oklahoma

E.D. OKLA. L.CIV.R. 83.7(a) ("Attorneys practicing in this Court are expected to conduct themselves in accordance with the Oklahoma Rules of Professional Conduct, as adopted by the Oklahoma Supreme Court, as the standard of conduct of all members of the Oklahoma Bar Association."); E.D. OKLA. L.CRIM.R. 1.2 ("When appropriate in a criminal context, the Local Rules of Civil Procedure are also deemed applicable to criminal cases.").

N.D. OKLA. L.CIV.R. 83.7(a) ("Attorneys practicing in this Court are expected to conduct themselves in accordance with the Oklahoma Rules of Professional Conduct, as adopted by the Oklahoma Supreme Court, as the standard of conduct of all members of the Oklahoma Bar Association.").

W.D. OKLA. L.CIV.R. 83.6(b) ("The Court adopts the Oklahoma Rules of Professional Conduct as adopted and amended from time to time by the Supreme Court of Oklahoma as the standard governing attorney conduct in this Court."); W.D. OKLA. L.CRIM.R. 57.2(a) ("The provisions of . . . LCvR83.6 Discipline by

the Court, are applicable to these local criminal rules and are not repeated.").

Oregon

U.S. DIST. CT. R. D. OR. CIV.L. R. 83.79(a) ("Every attorney admitted to general or special practice and every law student appearing pursuant to L. R. 83.5 must . . . [b]e familiar and comply with the standards of professional conduct required of members of the Oregon State Bar and this Court's Statement of Professionalism.").

Pennsylvania

E.D. PA. L.CIV.R. 83.6, R. IV.B. ("The Rules of Professional Conduct adopted by this court are the Rules of Professional Conduct adopted by the Supreme Court of Pennsylvania, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state . . . ."); E.D. PA. L.CRIM.R. 1.2 ("The following Local Civil Rules shall be fully applicable in all criminal proceedings . . . Rule 83.6 . . . .").

M.D. PA. L. R. 83.23.2 ("The Rules of Professional Conduct adopted by this court are: (1) the Rules of Professional Conduct adopted by the Supreme Court of Pennsylvania, except Rule 3.10, as amended from time to time by that court, unless specifically excepted in this court's rules; and (2) the Code of Professional Conduct enacted in the Middle District of Pennsylvania's Civil Justice Reform Act Plan.").

W.D. PA. L.CIV.R. 83.3.1(B) ("The rules of professional conduct adopted by this court are the rules of professional conduct adopted by the Supreme Court of Pennsylvania, as amended from time to time by

the state court . . . and as otherwise provided by specific order of this court.").

Rhode Island

U.S. DIST. CT. R.I. GEN. 208(a) ("The Standards of Professional Conduct for attorneys appearing and/or practicing before this Court shall be the Rules of Professional Conduct as adopted by the Rhode Island Supreme Court, as the same may from time to time be amended, and any standards of conduct set forth in these Rules.").

South Carolina

U.S. DIST. CT. R. D. S.C., R. DISC. ENFORCEMENT IV(B) ("The Code of Professional Responsibility adopted by this Court is the South Carolina Rules of Professional Conduct (Rule 407 of the South Carolina Appellate Court Rules) adopted by the Supreme Court of the State of South Carolina, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court.").

Tennessee

E.D. TENN. L. R. 83.6 ("The Rules of Professional Conduct adopted by the Supreme Court of Tennessee is hereby adopted as rules of professional conduct insofar as they relate to matters within the jurisdiction of this court.").

U.S. DIST. CT. R. M.D. TENN., L. R. 83.01(e)(4) ("The standard of professional conduct of the members of the bar of this Court shall include the current *Tennessee Code of Professional Responsibility, Tenn. Sup. Ct. R. 8*.").

W.D. TENN. L.CIV. R., L. R. 83.1(e) ("All attorneys practicing before the United States District Court for the Western District of Tennessee shall comply with

the Code of Professional Responsibility as then currently promulgated and amended by the Supreme Court of Tennessee . . . and with the Guidelines for Professional Courtesy and Conduct as adopted by this court.").

Texas

E.D. TEX. L. R. AT-2(a) ("The standards of professional conduct adopted as part of the Rules Governing the State Bar of Texas shall serve as a guide governing the obligations and responsibilities of all attorneys appearing in this Court. It is recognized, however, that no set of rules may be framed which will particularize all the duties of the attorney in the varying phases of litigation or in all the relations of professional life. Therefore, the attorney practicing in this Court should be familiar with the duties and obligations imposed upon members of this Bar by the Texas Disciplinary Rules of Professional Conduct, court decisions, statutes, and the usages customs and practices of this Bar.").

N.D. TEX. L.CIV.R. 83.8(E) & L.CRIM.R. 57.8(e) ("The term 'unethical behavior,' as used in this rule, means conduct undertaken in or related to a civil action in this court that violates the Texas Disciplinary Rules of Professional Conduct.").

S.D. TEX. L. R., APP. A, R. 1(A) ("Lawyers who practice before this court are required to act as mature and responsible professionals, and the minimum standard of practice shall be the Texas Disciplinary Rules of Professional Conduct.").

U.S. DIST. CT. W.D. TEX. L. R. AT-7(a) ("Members of the bar of this Court and any attorney permitted to practice before this Court must comply with the standards of professional conduct set out in the Texas

Disciplinary Rules of Professional Conduct . . . which are hereby adopted as the standards of professional conduct of this Court. This specification is not exhaustive of the standards of professional conduct. For matters not covered by the Texas rules, the American Bar Association's Model Rules of Professional Conduct should be consulted.").

Utah

D. UTAH CIV.R. 83-1.1(g) ("All attorneys practicing before this court, whether admitted as members of the bar of this court, admitted pro hac vice, or otherwise as ordered by this court, are governed by and must comply with the rules of practice adopted by this court, and unless otherwise provided by these rules, with the Utah Rules of Professional Conduct, as revised and amended and as interpreted by this court."); *see also* D. UTAH R. OF PRACT., ATTY. DISC. ("All attorneys practicing before this Court must comply with the rules of practice adopted by this Court and the Utah Rules of Professional Conduct, as revised and interpreted by this Court.").

Vermont

U.S. DIST. CT. R. D. VT., L. R. 83.2 (d)(4)(B) ("The Code of Professional Responsibility or Rules of Professional Conduct adopted by this court is the Code of Professional Responsibility or Rules of Professional Conduct adopted by the highest court of the state in which this court sits, as amended from time to time by that state court, except as otherwise provided by specific rule of this court after consideration of comments by representatives of Bar Associations within the state and other interested parties.").

Virginia

U.S. DIST. CT. E.D. VA. L.CIV.R. 83.1(I) ("The ethical standards relating to the practice of law in civil cases in this Court shall be the Virginia Rules of Professional Conduct . . . ."); U.S. DIST. CT. E.D. VA., L.CR.R. 57.4(I) (same).

U.S. DIST. CT. R. W.D. VA., DISC. R. IV(B)(1) ("The Code of Professional Responsibility adopted by the Virginia Supreme Court, as amended from time to time by that court and to the extent not in conflict with federal law, shall be the disciplinary rules of this Court, except as otherwise provided by specific Rule of this Court after specific consideration of comments by representatives of bar associations within the state.").

Washington

2009 WASH. CT. ORDER 5906, E.D. WASH. R. 83.3(a) ("This Court may impose discipline on any attorney practicing before this Court, whether or not a member of the bar of this Court, who engages in conduct violating applicable Rules of Professional Conduct of the Washington State Bar, or who fails to comply with rules or orders of this Court.").

W.D. WASH. GEN. R. 2(e) ("In order to maintain the effective administration of justice and the integrity of the Court, attorneys appearing in this District shall be familiar with and comply with the following materials ('Materials'): (1) The Local Rules of this District, including the Local Rules that address attorney conduct and discipline; (2) The Washington Rules of Professional Conduct, as promulgated, amended, and interpreted by the Washington State Supreme Court (the 'RPC'), and the decisions of any court applicable

thereto; (3) The Federal Rules of Civil and Criminal Procedure; (4) The General Orders of the Court.").

West Virginia

N.D. W.VA. L. R. GEN. P. 84.01 ("In all appearances, actions and proceedings within the jurisdiction of this Court, attorneys shall conduct themselves in accordance with the Rules of Professional Conduct and the Standards of Professional Conduct adopted by the Supreme Court of Appeals of West Virginia, and the Model Rules of Professional Conduct published by the American Bar Association, and shall be subject to the statutes, rules and orders applicable to the procedures and practice of law in this Court. These rules provide minimal standards for the conduct of attorneys and the Court encourages attorneys to conform their conduct to the highest ethical standards.").

U.S. DIST. CT. R. S.D. W.VA., L. R. CIV. P. 83.7 ("In all appearances, actions and proceedings within the jurisdiction of this court, attorneys shall conduct themselves in accordance with the Rules of Professional Conduct and the Standards of Professional Conduct promulgated and adopted by the Supreme Court of Appeals of West Virginia, and the Model Rules of Professional Conduct published by the American Bar Association. Judicial officers of this court must comply with the Code of Conduct for United States Judges adopted by the Judicial Conference of the United States; judiciary employees of this court must comply with the Code of Conduct for Judicial Employees, also adopted by the Judicial Conference.").

Wisconsin

E.D. WIS. GEN. L. R. 83.10(a) ("The standards of conduct of the members of the bar of this Court, of

government attorneys, and of nonresident attorneys admitted to practice before this Court must be those prescribed by the Rules of Professional Conduct for Attorneys, SCR:20: 1.1-8.5, as such may be adopted from time to time by the Supreme Court of Wisconsin and except as such may be modified by this Court.").

Wyoming

D. WYO. L. R., CIV.R. 83.12.7(b) ("The Rules of Professional Conduct adopted by this Court are the Rules of Professional Conduct adopted by the highest court of the state in which this Court sits, as amended from time-to-time by that state court, except as otherwise provided by specific rule of this Court after consideration of comments by representatives of bar association within the state."); D. WYO. L. R., L.CR.R.1.2 ("When appropriate in a criminal context, the Local Rules of Civil Procedure are also deemed applicable in criminal cases.").

District Courts That Do Not Adopt State Ethical Rules and/or ABA Model Rules

Nebraska

D. NEB. GEN. R. 1.7(B)(2) ("Counsel must refrain from conduct unbecoming of a member of the Bar. (A) This court declines to adopt other codes of professional responsibility or ethics. (B) However, and in addition to any other material, the court may consult other codes of professional responsibility or ethics to determine whether a lawyer has engaged in conduct unbecoming of a member of the bar.").

North Dakota

D. N.D. L. R. 1.3(H)(2) (Stating "[w]here it is shown to the court that any attorney admitted to practice before this court may have . . . breached standards of

professional conduct, the court may enter an order requiring the attorney to appear before the court and show good cause why that attorney should not be suspended or disbarred from practice before the court," but not explicitly adopting any standards of professional conduct).

South Dakota

D.S.D. LOCAL R. 83.2(G)(4) (Stating "[i]f . . . the United States Attorney shall be of the opinion that there has been a breach of professional ethics by a member of this Bar, the United States Attorney . . . shall file and prosecute a petition requesting that the alleged offender be subjected to appropriate discipline," but not explicitly adopting any standards of professional conduct).

Wisconsin

W.D. WIS. L. R. 83.5 ("The local rules do not adopt rules of professional conduct for members of the bar of the court.").